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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 SHANNON WILSON,

11 Plaintiff,

12 v.

13 HARRISON HOSPITAL et al.,

14 Defendant.  
15  
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Case No. C08-5731 FDB

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL AND  
ORDERING PLAINTIFF TO SHOW  
CAUSE WHY THIS MATTER  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO PROSECUTE

17 This matter comes before the Court on Plaintiff's motion for continuance and for  
18 appointment of counsel. The Court, having reviewed the motion and the record herein, denies the  
19 motion for appointment of counsel and orders the Plaintiff to show cause why this matter should not  
20 be dismissed for failure to prosecute.

21 **Introduction and Background**

22 On July 24, 2009, this Court entered an order directing Plaintiff to show cause why this  
23 employment discrimination action should not be dismissed for failure to prosecute. In response,  
24 counsel for Plaintiff moved to withdraw and requested a continuance of the pretrial dates for thirty  
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1 days to permit Plaintiff to obtain substitute counsel.

2 On August 25, 2009, this Court entered an Order granting Plaintiff an extension of time until  
3 September 18, 2009 in which to obtain new counsel, or in which to advise the Court whether she  
4 intended to proceed *pro se*. The Order permitted Plaintiff's counsel to withdraw, effective  
5 September 18, 2009. Apparently, Plaintiff has not been able to employ new counsel, nor has she  
6 informed this Court as to her intention to proceed pro se. Instead, Plaintiff has filed the instant  
7 motion for a further continuance of the pretrial dates, and requests the Court appoint counsel to  
8 prosecute her action.

### 9 Appointment of Counsel in Civil Matters

10 Plaintiff moves for appointment of counsel to prosecute this civil rights employment  
11 discrimination action. Generally, there is no constitutional right to counsel in a civil case. United  
12 States v. 30.64 Acres of Land, 795 F.2d 796, 801 (9<sup>th</sup> Cir. 1986). However, pursuant to 28 U.S.C. §  
13 1915(d), the court has discretion to request volunteer counsel for indigent plaintiffs in exceptional  
14 circumstances. Id.; Wood v. Housewright, 900 F.2d 1332, 1335 (9<sup>th</sup> Cir. 1990). While the court  
15 may request volunteer counsel in exceptional cases, it has no power to make a mandatory  
16 appointment. Mallard v. U.S. Dist. Court of Iowa, 490 U.S. 296, 301-08 (1989). In order to  
17 determine whether exceptional circumstances exist, the court evaluates the plaintiff's likelihood of  
18 success on the merits and the ability of the plaintiff to articulate his or her claim pro se in light of  
19 the complexity of the legal issues involved. Wood, at 1335-36; Richards v. Harper, 864 F.2d 85, 87  
20 (9<sup>th</sup> Cir. 1988).

21 Initially, the Plaintiff has not established *in forma pauperis* status. Moreover, Plaintiff has  
22 not demonstrated a likelihood of success on the merits or exceptional circumstances which warrant  
23 appointment of counsel. Accordingly, Plaintiff's motion for appointment of counsel shall be  
24 denied.

### 25 Show Cause

1 Plaintiff has previously been afforded additional time to employ counsel. That deadline has  
2 passed. By this Order, the Court denies the request for appointment of counsel. Thus, Plaintiff has  
3 the choice to proceed pro se or to voluntarily dismiss this action. Thus, the Court will allow  
4 Plaintiff to state her intentions no later than October 9, 2009. On or before that date, Plaintiff will  
5 inform the Court whether she intends to proceed pro se (or an appearance is entered by new  
6 counsel). In the event Plaintiff fails to respond as directed, this matter will be dismissed without  
7 further notice.


8 ACCORDINGLY;

9 IT IS ORDERED:

10 Plaintiff's Motions for appointment of counsel and continuance [Dkt # 9 & 10] are  
11 **DENIED.**

12 Plaintiff is directed to indicate to this Court, no later than October 9, 2009, whether she  
13 intends to proceed pro se, or new counsel files an appearance. In the event Plaintiff fails to  
14 respond as directed, this matter will be dismissed without further notice.

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16 DATED this 2<sup>nd</sup> day of October, 2009.

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21 FRANKLIN D. BURGESS  
22 UNITED STATES DISTRICT JUDGE  
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